137

(2)

No. 09-81

Supreme Court, U.S.
FILED
AUG 21 2009
OFFICE OF THE CLERK

In The
Supreme Court of the United States

WILLIAMS CONTROLS, INC.,

Petitioner,

v.

BRAULIO M. CUESTA and ERIC L. GOLDEN,
Individually and on Behalf of
All Others Similarly Situated,

Respondents.

**On Petition For A Writ Of Certiorari
To The Supreme Court
Of The State Of Oklahoma**

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MICHAEL BURRAGE
DAVID BURRAGE
BURRAGE LAW FIRM
First United Center,
Suite 100
115 North Washington
Durant, OK 74720
(580) 920-0700

TROY L. GREENE
GREENE LAW FIRM, P.C.
1415 Louisiana, Suite 3200
Houston, TX 77002
(713) 547-0500

GRANT J. HARVEY
ANDREW L. PICKENS
Counsel of Record
MARK A. GIUGLIANO
GIBBS & BRUNS, LLP
1100 Louisiana, Suite 5300
Houston, TX 77002
(713) 650-8805

JOHN E. DOWDELL
WILLIAM W. O'CONNER
NORMAN WOHLGEMUTH
CHANDLER & DOWDELL
2900 Mid-Continental Tower
401 South Boston Avenue
Tulsa, OK 74103
(918) 583-7571

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

(1) Whether this Court has jurisdiction to review a non-final, interlocutory ruling issued by the Oklahoma Supreme Court affirming, in part, a state district court's class certification order.

(2) Whether the Oklahoma Supreme Court violated the Due Process or Full Faith and Credit Clauses of the U.S. Constitution when it affirmed the state district court's application of Michigan law in a class action certification proceeding after concluding, based upon a thorough review of the factual record, that WCI's Michigan contacts were "numerous and significant" such that the application of Michigan law was neither arbitrary nor fundamentally unfair.

PARTIES TO THE PROCEEDINGS BELOW

Respondent and Appellant-Class Representative in the Oklahoma Supreme Court, Dr. Braulio M. Cuesta, an individual residing in Bryan County, Oklahoma;

Respondent and Appellant-Class Representative in the Oklahoma Supreme Court, Mr. Eric L. Golden, an individual residing in Tulsa County, Oklahoma;

Petitioner and Appellee-Defendant in the Oklahoma Supreme Court, Williams Controls, Inc. ("WCI" or "Williams"), a Delaware Corporation with its principal place of business in Portland, Oregon and its "Corporate Office – Michigan" located at 701 Orchard Lake Road, Suite 424, West Bloomfield, Michigan 48322; and

Appellee-Defendant in the Oklahoma Supreme Court, Ford Motor Company ("Ford"), a Delaware Corporation with its principal place of business in Dearborn, Michigan and "Quality, Manufacturing and Purchasing Operations" located at 17101 Rotunda Drive, Dearborn, Michigan 48121.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	vi
STATEMENT OF BASIS FOR JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	1
STATEMENT OF THE CASE	2
I. Factual Background	2
II. The State District Court's Certification Order	6
III. Oklahoma Appellate Proceedings	8
SUMMARY OF ARGUMENT	10
ARGUMENT	12
I. This Court Does Not Possess Jurisdiction to Review the Oklahoma Supreme Court's Non-Final, Interlocutory Class Certification Order	12
A. Under Title 28, Section 1257(a), WCI's Petition for Certiorari Cannot Be Granted Because No Final Judgment Has Issued	12

TABLE OF CONTENTS – Continued

Page

B. While There Are a Few Limited Circumstances in Which the Finality Requirements Set Forth in Section 1257(a) May be Relaxed, None Are Applicable Here 13

C. The Potential for Piecemeal Review of Federal Issues Raised in This Case Further Undermines Any Contention by WCI That This Court Possesses Jurisdiction to Review WCI's Petition 16

II. Outside of Mere Error Correction, WCI Presents No Rationale for a Grant of Certiorari 19

A. There Is No Lower Court Split On the Questions Presented 20

B. The Issues Raised Are Neither Important Nor Recurring 22

III. Oklahoma's Conflict-of-Laws Principles Comport Fully with the Due Process and the Full Faith and Credit Clauses 24

A. The Constitution Does Not Mandate the Application of a Universal Set of Conflict-of-Laws Principles 24

TABLE OF CONTENTS – Continued

Page

B. If the Application of a State's Conflict-of-Laws Principles Leads to the Selection of a State's Laws Where That State's Contacts with the Litigation and the Class Plaintiffs Are Significant, the Conflicts Analysis Fulfills the Requirements of the Constitution 26

C. As Explained by the Oklahoma Supreme Court in its Opinion, on this Record, There Is a Significant Aggregation of Contacts Between Michigan and the Class Members' Claims, and as a Result, the Application of Michigan Law Complies With the Constitutional Standard Set Forth in *Shutts* 27

D. The Constitution Does Not Require That in a Breach of Warranty Class Action That the Laws of Any Particular State Control 34

CONCLUSION 36

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981).....24

BMW of N. America v. Gore, 517 U.S. 559 (1996).....32

Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978).....15, 16

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).....13, 14, 15, 17

Day & Zimmermann, Inc. v. Challoner, 423 U.S. 3 (1975).....24

Ferguson v. Skrupa, 372 U.S. 726 (1963).....25

Flynt v. Ohio, 451 U.S. 619 (1981).....7

Home Ins. Co. v. Dick, 281 U.S. 397 (1930).....29, 30

In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig., 333 F.3d 763 (7th Cir. 2003).....18

Jefferson v. City of Tarrant, 522 U.S. 75 (1997).....12

Mkt. St. Ry. Co. v. R.R. Comm'n of Cal., 324 U.S. 548 (1945).....12

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985).....*passim*

Randle v. Spectran, 129 F.R.D. 386 (D. Mass. 1988).....8

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003).....32

Wells v. Simonds Abrasive Co., 345 U.S. 514 (1953).....25

TABLE OF AUTHORITIES – Continued

Page

STATE CASES

Compaq Computer Corp. v. Lapray, 135 S.W.3d 657 (Tex. 2004) 21

Dragon v. Vanguard Indus., Inc., 89 P.3d 908 (Kan. 2004) 20, 21

Lobo Exploration Co. v. Amoco Prod. Co., 991 P.2d 1048 (Okla. Civ. App. 1999) 13

Ysbrand v. DaimlerChrysler Corp., 81 P.3d 618 (Okla. 2003) 22, 29

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. XIV, § 1 ..... 1, 10

U.S. CONST. art. IV, § 1 ..... 1, 10

FEDERAL STATUTES

28 U.S.C. § 1257 ..... *passim*

49 U.S.C. § 30118 17

Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified at 28 U.S.C. § 1332(d)) 23

STATE STATUTES

OKLA. STAT. tit. 12 § 2023 (1993) 13

Oklahoma Comprehensive Lawsuit Reform Act of 2009, 2009 Okla. Sess. Law Serv. Ch. 228, HB 1603, sec. 16, § 2023(D)(3) (West) 23

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Fed. R. Civ. P. 23 15

RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6, 191 & cmt. f (1971) 27

STATEMENT OF BASIS FOR JURISDICTION

In its Petition for a Writ of Certiorari ("Petition"), Petitioner WCI requests that this Court reverse an interlocutory decision issued on April 21, 2009 by the Oklahoma Supreme Court affirming, in part, the Oklahoma district court's decision to certify a class. Because the Oklahoma Supreme Court has not rendered a final judgment, this Court does not have jurisdiction to review WCI's Petition under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Full Faith and Credit Clause, U.S. Const. art. IV, § 1, provides, in pertinent part:

> Full Faith and Credit shall be given in each State to the Public acts, Records, and Judicial Proceedings of every other State.

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> Nor shall any State deprive any person of life, liberty, or property, without due process of law.

28 U.S.C. § 1257(a) provides, in pertinent part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where

> . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . . of . . . the United States.

STATEMENT OF THE CASE

I. Factual Background

Class Representatives Dr. Braulio M. Cuesta and Mr. Eric L. Golden filed this action on behalf of themselves and approximately 500,000 other purchasers and/or owners of certain Ford vehicles that were equipped with defective accelerator pedals designed and manufactured by Petitioner WCI. In all three of the pedal models involved in this action, a gap exists between the mounting bracket and the vehicle floor. As a result, when foreseeable levels of heavy pressure are applied to the pedal, the pedal structure twists and bends, which causes the pedal's electronic signal to go out of range. Thus, when a driver presses with heavy force on the pedal – expecting the vehicle to accelerate – the pedal instead malfunctions and shifts the vehicle to idle.

Petitioner WCI is an automobile component parts manufacturer.[1] During the relevant time period, WCI

[1] Without citing any evidence, WCI asserts that it is a "holding company" which "does not design, manufacture, market or sell any product." Pet. at 3. WCI made this same assertion in a motion to dismiss in the state district court. *See* WCI Mot. to Dismiss of 11/15/04 at 1-3. The Class Representatives responded by, among other things, pointing out that WCI admitted the

(Continued on following page)

maintained offices in Michigan and engaged in business in the state of Michigan by entering into an accelerator pedal supply contract with Ford Motor Company, a Michigan-based automobile manufacturer whose contracting, purchasing, engineering, and design groups were all based in Michigan.[2] The negotiations between WCI and Ford regarding the pedal supply contract were embodied in written communications sent between WCI's Michigan office and Ford's Michigan office.[3] Numerous decisions regarding the design, manufacture, and distribution of the pedals were made by WCI in Michigan, and the defective pedals were manufactured according to engineering specifications that emanated from Ford's engineers in Michigan.[4]

---

following in a death case arising from one of the defective WCI accelerators at issue here:

> 4.10. *Williams Controls, Inc. admits that it designed, manufactured, tested, marketed and distributed accelerator pedals* to Ford Motor Company, including the accelerator pedal with Part Number 1C34-9F836-BA for use in Ford F-250 vehicles. . . .

Pls.' Resp. to WCI Mot. to Dismiss of 12/3/04 at 4 (emphasis added). Part 1C34-9F836-BA is one of the three pedals at issue in this class action. *See, e.g.*, App. for Evid. in Further Support of Pls.' Resp. of 2/14/05 at 3. The District Court denied WCI's motion to dismiss. *See* Order of 5/27/05.

[2] Pls.' Mot. for Class Cert. of 12/19/05, Ex. A9.

[3] *Id.*, Ex. A8.

[4] *Id.*, Ex. A10-A11.

The pedals WCI ultimately manufactured, however, failed to meet Ford's engineering specifications. To ensure compliance with its specifications, Ford required that a test sample of WCI's production-ready pedal assemblies pass a battery of Production Validation tests, including several Overload Sub-Tests.[5] With respect to each Overload Sub-Test, Ford's specifications required a 100% pass rate.[6] The pedals did not meet this standard, and with respect to one sub-test in particular, 100% of the pedals failed.[7] Despite these failings, WCI and Ford moved forward with the manufacture and installation of the pedals.

Almost immediately after the trucks containing the defective pedals "hit the road," Ford warranty data showed that drivers began complaining that their trucks failed to accelerate when the drivers pressed on the accelerators.[8] Ford's own employees also reported this exact problem in their own vehicles. Ford employee Jeff Baer advised Ford engineers

---

[5] *See* PCR, Ex. 2, Ford Eng'g Spec. of 6/20/00 at 7303-05; *id.*, Ex. 3, Conrad Dep. of 6/23/05 at 209, 230-32; *id.*, Ex. 5, West Dep. of 6/22/05 at 96, 102-03, 109-11. "PCR" refers to Plaintiffs' Consolidated Reply to Ford's and WCI's Responses to Plaintiffs' Motion for Class Certification of 8/18/06.

[6] PCR, Ex. 2, Ford Eng'g Spec. of 6/20/00 at 7294.

[7] *See, e.g.*, PCR, Exs. 11, 14-15, PV Overload Sub-Tests & Graphs; *id.*, Ex. 5, West Dep. of 6/22/05 at 144, 146-47; *id.*, Ex. 12, West Dep. of 2/24/04 at 78; *id.*, Ex. 13, Kromberg Dep. of 8/10/06 at 30-31.

[8] *See* PCR, Ex. 22, Klein email of 10/25/01.

in January 2002 that when he pressed the BA pedal in his own Ford "Super Duty" truck down quickly, the "check engine" light came on and the engine reverted to idle rather than accelerating.[9] Baer candidly noted, "[T]his is a condition that I would think we probably don't want to exist in the field."[10] Ford engineer Greg West ultimately identified the gap created by the defectively designed pedal mounting bracket as the cause of torsion in the pedal when overloaded.[11]

The dangers posed by the defective pedals are not trivial. In June 2002, a defective pedal caused a fatal accident. As a Ford truck turned left through an intersection and the driver pressed down on the defective accelerator, the truck reverted to idle and stalled. An oncoming van collided head-on with the stalled truck, killing the van's driver and seriously injuring the passengers.[12] Ford technicians later determined that the pedal voltage had gone out of range, such that the truck would "only idle[]" in the dealership's parking lot when the accelerator pedal was depressed.[13]

---

[9] *See* PCR, Ex. 24, Baer Email of 1/8/02.

[10] PCR, Ex. 25, Baer Email of 1/9/02; *see also id.*, Ex. 5, West Dep. of 6/22/05 at 89-90.

[11] PCR, Ex. 48, Trip Summ. of 1/9/03; *see also id.*, Ex. 47, WCI 8-D of 1/16/03 (rev. 1/23/03).

[12] Pls.' Mot. for Class Cert. of 12/19/05, Ex. A3 at 9.

[13] *See* PCR, Ex. 31, McGilvray Invoice of 1/20/03.

In 2003, after receiving numerous complaints, the National Highway Traffic Safety Administration ("NHTSA") launched an investigation into the pedal assemblies. After conducting its own Overload Tests on the pedals, NHTSA confirmed that they malfunctioned and failed to meet Ford's own engineering specifications. Citing limited agency resources, however, NHTSA did not pursue the investigation. This came as no surprise to WCI personnel, who had described NHTSA in unflattering terms, noting that while NHTSA "has the legal power to order a recall, matters seldom evolve to this level now with NHTSA, given the politics . . . ."[14] In any event, NHTSA stated that its decision to close the investigation did not constitute a finding that a safety-related defect did not exist.[15]

To date, WCI and Ford have done nothing to remedy this dangerous defect. Plaintiffs filed the present suit on September 23, 2004 and moved for class certification on December 19, 2005.[16]

II. The State District Court's Certification Order

In determining whether to certify this case as a class action, the state district court undertook a fact-specific choice-of-law analysis and determined that

---

[14] PCR, Ex. 62, Borda email of 9/11/03.

[15] Pls.' Mot. for Class Cert. of 12/19/05, Ex. A3 at 10.

[16] *Id.*, Ex. D, West Dep. of 2/24/04 at 86.

Michigan law had the most significant relationship to Plaintiffs' breach of warranty claims. Pet. App. 29a-30a. The state district court cited numerous examples of WCI's contacts with Michigan. The court noted that both Ford and WCI made decisions in Michigan concerning the design, manufacture, and distribution of the defective pedal assembly. *Id.* at 29a. In addition, the court noted that "WCI met with Ford in Michigan several times to pitch its fixed pedals, designed its pedals to Ford's Michigan standards, and from its Michigan office, WCI negotiated the pedal contract and corresponded with Ford regarding the pedal specification and performance goals." *Id.* at 30a The state district court held that, under these facts, Michigan law applied to Plaintiffs' claims. *Id.*

WCI is incorrect when it states that the district court failed to address the constitutional arguments it raised in opposing the motion for class certification. Immediately after finding that Michigan law applied to Plaintiffs' claims, the state district court measured its choice-of-law determination against the due process standard enunciated in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), and stated that "federal law likewise supports the application of Michigan law to WCI, despite that it is headquartered in another state" because the "aggregation of meaningful contacts clearly points to applying Michigan law." Pet.

App. 30a.[17] Because WCI willingly engaged in substantial business in Michigan and that business gave rise to the claims in the lawsuit, the court held that Michigan law fairly applied to WCI. *Id.*

III. Oklahoma Appellate Proceedings

WCI and Ford appealed the class certification order by filing a merits brief with the Oklahoma Supreme Court. The court assigned the appeal to the Oklahoma Court of Civil Appeals (COCA), which reversed the district court order and decertified the class. Pet. App. 37a-67a.

Plaintiffs then filed a Petition for Writ of Certiorari in the Oklahoma Supreme Court. After considering the extensive briefing on file from each side, the Oklahoma Supreme Court granted Plaintiffs' petition and reversed the COCA. Pet. App. 69a-91a.

The Oklahoma Supreme Court explained that, under existing Oklahoma law, the Restatement (Second) of Conflicts "most significant relationship test" was the proper choice of law inquiry for breach of warranty claims. Pet. App. 78a. The court reviewed the record and the trial court's fact-specific analysis and concluded that WCI's contacts with Michigan were "numerous and significant." *Id.* at 81a. The

---

[17] While the state district court did not explicitly mention *Shutts* in conducting this constitutional analysis, it cited *Randle v. Spectran*, 129 F.R.D. 386, 393 (D. Mass. 1988), a case that applied *Shutts* to analogous facts.

Oklahoma Supreme Court noted, for instance, that "WCI contracted with Ford in Michigan and produced the pedals as a supplier for trucks manufactured by Ford." *Id.* In addition, the engineering specifications from which Williams was to design the pedals emanated from Ford's engineers in Michigan. *Id.* Moreover, the court found that both Ford and Williams understood that Ford's requirements and specifications would govern the business relationship and that Ford, through its Michigan offices, would direct the activities between the parties. *Id.* On this record, the court determined that Michigan had the most significant relationship to Plaintiffs' breach of warranty claims against WCI.

In addition, the Oklahoma Supreme Court concluded that Oklahoma conflict-of-laws principles and the state district court's application of them to the facts of this case met the constitutional standards set forth in *Shutts*. The court determined that WCI had the requisite "significant 'aggregation of contacts'" with Michigan; thus, the application of Michigan law to the breach of warranty claims was constitutional. Pet. App. 83a.

WCI now seeks review in this Court.

SUMMARY OF ARGUMENT

The order from which WCI seeks review on certiorari is not a final judgment, and as a result, this Court lacks jurisdiction under 28 U.S.C. § 1257(a) to consider WCI's Petition. Furthermore, while this case is important to the litigants, it is devoid of any meaningful jurisprudential significance. There is no split of authority with regard to the constitutionality of the Oklahoma conflict-of-laws principles: no state or federal court has concluded that the Oklahoma conflict-of-laws principles applied here violate either the Due Process or Full Faith and Credit Clauses of the U.S. Constitution.

WCI points out that other courts in different states employing different conflict-of-laws principles might well have arrived at a different answer regarding which state's (or states') laws should govern in a similar type of case. That is not surprising – to the contrary it is expected – since each state is free to adopt its own body of law regarding conflict of laws. It certainly does not raise a constitutional issue, let alone one worthy of consideration on certiorari.

The constitutional limitations applicable to conflict-of-laws principles are very narrow. So long as the state whose laws are selected has a significant aggregation of contacts to the class plaintiffs and their claims, the selection passes muster under the Constitution. *See Shutts*, 472 U.S. at 821-22. And that was certainly the case here.

The Oklahoma Supreme Court reviewed carefully the extensive factual record developed at the underlying class certification hearing and concluded that the trial court did not err in applying Michigan law based upon the applicable Oklahoma conflict-of-laws principles. The court specifically held that "for purposes of Plaintiffs' breach of warranty claims . . . the law of Michigan, the state of Ford's principal place of business as manufacturer which controlled the specifications, requirements and testing for the pedals, has a greater 'intensity of interest' than any other state involved." Pet. App. 83a. And it further noted that "in light of the nature and extent of Williams' contacts with Ford in Michigan," the trial court's determination that Michigan has a significant aggregation of contacts was "neither arbitrary nor fundamentally unfair." *Id.*

The Oklahoma Supreme Court's determination that the state district court performed the correct conflict-of-laws analysis clearly meets the constitutional requirements set forth in *Shutts*. There simply is no jurisdictional or merits basis on which to grant WCI's Petition.

ARGUMENT

I. This Court Does Not Possess Jurisdiction to Review the Oklahoma Supreme Court's Non-Final, Interlocutory Class Certification Order.

A. Under Title 28, Section 1257(a), WCI's Petition for Certiorari Cannot Be Granted Because No Final Judgment Has Issued.

28 U.S.C. § 1257(a) provides:

> (a) Final judgments . . . rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any . . . right . . . is . . . claimed under the Constitution . . . .

Id.

Section 1257(a) "establishes a firm final judgment rule." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997). To be reviewable by the Supreme Court, "a state-court judgment must be final 'in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Id.* (quoting *Mkt. St. Ry. Co. v. R.R. Comm'n of Cal.*, 324 U.S. 548, 551 (1945)).

No final judgment exists here. Discovery has not been completed, experts have not been deposed, and the trial has not yet been scheduled. The state

district court's order certifying the class, which the Oklahoma Supreme Court affirmed, is conditional and subject to correction or amendment by the state district court until final judgment is entered. The state district court expressly stated that its order certifying the class was "conditional and may be reconsidered if class treatment proves improvident." Mem. Op. of 3/1/07 at 36; *cf.* OKLA. STAT. tit. 12 § 2023(C)(1) (1993) (Oklahoma class action rule noting that an order certifying a class "may be conditional, and may be altered or amended before the decision on the merits"); *Lobo Exploration Co. v. Amoco Prod. Co.*, 991 P.2d 1048, 1050 (Okla. Civ. App. 1999) (certification order "always subject to modification prior to judgment on the merits."). As no final judgment has been entered, this Court is without jurisdiction to review the issues raised by WCI in its Petition.

B. While There Are a Few Limited Circumstances in Which the Finality Requirements Set Forth in Section 1257(a) May be Relaxed, None Are Applicable Here.

In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975), this Court described four scenarios in which Section 1257's finality requirements are relaxed. None apply here. Indeed, the only one even arguably applicable is the fourth.[18]

---

[18] The first scenario is raised when the state's highest court's ruling with respect to the federal issue "is conclusive"

(Continued on following page)

The fourth scenario is implicated when the federal issue has been "finally decided" by the highest state court, but there are "further proceedings pending" in which the party that was on the losing side of the federal issue might still prevail on nonfederal grounds thereby "rendering unnecessary review of

---

such that "the outcome of further proceedings [is] preordained." *Id.* at 479. In *Cox*, this Court provided as an example a situation where the only defense to a criminal complaint filed in state court is one based on federal constitutional grounds. If a state supreme court rejects that defense, then the outcome in the trial court is effectively "preordained," and the state supreme court's opinion is, for all practical purposes, final. *Id.* The second scenario is where the federal issue, which is decided by the state's highest court, will necessarily survive and will require decision "regardless of the outcome of future state-court proceedings." *Id.* at 480. The example offered by this Court involved a ruling by the Nebraska Supreme Court requiring the transfer of a federal license and a companion accounting. Regardless of the outcome of the accounting, the decision requiring the transfer of the federal license would necessarily survive the proceedings. *Id.* Under such circumstances, the state court's determination of the license-transfer issues can be considered final for purposes of Section 1257. *Id.* The third scenario is where the federal claim has finally been decided, but further proceedings in the state court will necessarily eliminate any basis for presenting the federal claim for review. *Id.* at 481. The example provided in *Cox* involved a reversal by the highest state court of a conviction on federal constitutional grounds coupled with a remand for trial. In such a case, if the defendant obtains an acquittal at trial, under state law, there can be no appeal. On the other hand, if the state obtains a verdict against the defendant, in spite of the prior reversal, the court's earlier opinion would be "mooted." *Id.* The net result is that the state court's ruling on the federal issue will never be reviewed; accordingly, the state court's ruling can be deemed final. *See id.* None of these scenarios are applicable to the case at bar.

the federal issue by this Court . . . ." *Id.* at 482. In such a circumstance, if reversal of the state court's decision would be preclusive on any further litigation, and "if a refusal immediately to review the state court decision might seriously erode federal policy," then the state court determination can be deemed final. *Id.* at 482-83.

This fourth *Cox* scenario, like the first three, does not apply here. Delaying review will not erode, let alone "seriously erode," federal policy. That very point was made in *Coopers & Lybrand v. Livesay,* 437 U.S. 463 (1978). In *Coopers & Lybrand*, which was decided prior to the advent of Federal Rule of Civil Procedure 23(f) (which when adopted provided for a discretionary appeal of class certification rulings entered by federal district courts), this Court held that delaying resolution of a federal district court's decision not to certify a class was **not** appealable as a matter of right. Of particular relevance to whether there exists any risk of eroding federal policy by delaying an appeal of a class certification ruling, in *Coopers & Lybrand*, this Court dismissed the parties' competing policy arguments[19] as irrelevant to the question of appealability. *See id.* at 470 ("Such policy arguments, though proper for a legislative consideration, are

---

[19] Petitioner in *Coopers & Lybrand* criticized the class action as a vexatious type of litigation where certification may constitute a "death knell" for the defense; respondents countered that class actions served a vital public interest in facilitating recovery on small claims. *See* 437 U.S. at 470.

irrelevant to the issue we must decide."). In addressing petitioner's argument that certification of a large class action could amount to a "death knell" for the defense,[20] this Court noted that, if such an argument had any merit, it "would apply equally to the many interlocutory orders in ordinary litigation – rulings on discovery, on venue, on summary judgment – that may have such tactical economic significance that a defeat is tantamount to a 'death knell' for the entire case." *Id.* The so-called class action resolution policy concerns that this Court rejected in *Coopers & Lybrand* are analogous to any WCI could present here. Because there is no "eroding federal policy" at issue, the Oklahoma Supreme Court's interlocutory ruling is not subject to certiorari review under 28 U.S.C. § 1257(a).

C. The Potential for Piecemeal Review of Federal Issues Raised in This Case Further Undermines Any Contention by WCI That This Court Possesses Jurisdiction to Review WCI's Petition.

This Court has also refused to deem as final state court orders where the ongoing state court proceedings could lead to multiple appellate proceedings involving multiple federal question issues. "In most, if not all of the cases in these categories, these additional proceedings would not require the decision of

---

[20] *Cf.* Pet. at 32 (WCI complaining that with a purportedly "pre-ordained class certification, plaintiffs' lawyers can exert extreme settlement leverage on multi-defendants").

other federal questions that might also require review by the Court at a later date . . . ." *Cox*, 420 U.S. at 477-78. In *Flynt v. Ohio*, 451 U.S. 619 (1981), this Court reiterated its adherence to this "no piecemeal review" standard when making determinations of "finality" for purposes of Section 1257 jurisdiction. *Id.* at 621 (refusing to grant certiorari because other federal issues would be involved in the trial court proceeding).

Here, for example, both WCI and Co-Defendant Ford asserted that the class representatives' and members' claims are preempted by federal law.[21] Having been raised in the action below, the issue of conflict preemption could potentially require review by this Court after final judgment. In addition, class actions often raise federal due process issues concerning both the notice and opt-out processes and the conduct of trial. *See Shutts*, 472 U.S. at 811-12 ("If the forum State wishes to bind an absent plaintiff . . . it must provide minimal procedural due process protection. The plaintiff must receive notice plus an

---

[21] *See* WCI Resp. to Pls.' Mot. to Remand of 11/29/04 at 1-2 ("The doctrine of 'conflict preemption,' the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. § 30118 . . . and the Federal Motor Vehicle Safety Standards . . . all preempt plaintiff's state law claims relating to the allegedly defective accelerator pedals in these Ford vehicles."); Ford Opp'n to Pls.' Mot. to Remand of 11/29/04 at 8-9 ("Conflict preemption exists . . . . [T]he allegations . . . reveal that any finding of liability would necessarily rely on an interpretation of the federal motor vehicle safety regulations and the federal Safety Act under which those regulations were promulgated.").

opportunity to be heard and participate in the litigation . . . .").

It is important to note that these potential federal issues would remain even if this Court were to reverse the Oklahoma district court's decision affirming certification of a nationwide class. For example, reversal of the Oklahoma Supreme Court on the due process issue that WCI now presents would not preclude certification of narrower classes. *See, e.g., In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 333 F.3d 763, 766 (7th Cir. 2003) (prior decision reversing class certification "contemplated that states would certify narrower classes").[22] As this case is presently postured, were this Court to grant WCI's Petition, additional federal issues could surface at
a later time – once a *bona fide* final judgment is entered.

In sum, the Oklahoma Supreme Court did not issue the requisite final order necessary to support jurisdiction under 28 U.S.C. § 1257(a). WCI's Petition must, therefore, be denied.

---

[22] *Cf.* Pet. App. 85a ("The trial court can use subclasses, if necessary . . . ."). Further, even reversal of all class certifications would not preclude litigation of the purportedly preempted claims by the two individual plaintiffs.

II. Outside of Mere Error Correction, WCI Presents No Rationale for a Grant of Certiorari.

WCI's Petition should be denied because it has failed to establish that the three questions allegedly presented should be reviewed by this Court. The Petition contains essentially no discussion of the case's suitability as a vehicle for this Court's review of the questions presented, does not establish that the questions presented have been considered sufficiently (or even at all) by other lower courts, and falls woefully short of establishing any split among courts of appeal or state supreme courts. Instead, the Petition is dedicated nearly entirely to an appeal asking this Court to correct what WCI perceives as factual and legal errors allegedly made by the Oklahoma Supreme Court. In what is perhaps an implicit recognition of these infirmities and an acknowledgment that this Court's primary role is not error correction, WCI concludes its Petition with a two-page catch-all section that uses emotionally-laden rhetoric to demonize plaintiffs' lawyers and class action lawsuits and argue that the questions presented are "important" and "recurring" and thus worthy of this Court's review. These arguments are not persuasive, and this Court should deny the Petition.

A. There Is No Lower Court Split On the Questions Presented.

WCI states that there is a "significant conflict" between three states on the issues allegedly presented by this case. Pet. at 14. But WCI offers no analysis to support this purported conflict; indeed, the only other mention of this "split" comes in a single sentence that summarily states that Oklahoma's position differs from that of Kansas and Texas and lists a case from each of those state's supreme courts. Pet. at 13. But a short examination of those two cases demonstrates that neither is at odds with the holding of the case being appealed here.

In *Dragon v. Vanguard Industries, Inc.*, 89 P.3d 908, 919 (Kan. 2004), the Kansas Supreme Court held that a court must conduct a choice-of-law determination before making a class certification decision. This holding reversed the lower court's determination that a choice-of-law determination was premature at the certification stage. *Id.* at 914. While the parties argued to the Kansas Supreme Court regarding which law would apply to the dispute, the court held that "[b]ecause these issues were not developed in the record before us and were not analyzed by the trial court, we cannot determine the validity of plaintiffs' argument or determine which state's or states' laws apply in this case." *Id.* at 918. The court expressed no opinion on whether Oklahoma's choice-of-law methodology (or any similar methodology) ran afoul of the U.S. Constitution.

The only other case cited by WCI, *Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657 (Tex. 2004), likewise presents no support for WCI's claim of a conflict between state courts. In *Lapray*, as in *Dragon*, the lower court had declined to make a choice of law determination although it had identified "the choice of law rulings that it likely [would] make" and stated that it "believed that it [could] properly apply Texas law . . . ." *Id.* at 672. The Texas Supreme Court held that the failure of the lower and appellate courts to conduct a choice-of-law analysis was error, *id.* at 673, and it remanded the case, *id.* at 681. The court also, however, provided *dicta* "to demonstrate the inquiry the [lower courts] failed to make." *Id.* at 673 (internal citations and quotations omitted). After evaluating the law of several jurisdictions, the court reviewed the relevant contacts under the Restatement's "most significant relationship" test and found that, under Texas law, "the class representatives have failed to demonstrate [that Texas substantive law] will apply to the claims of out-of-state class members." *Id.* at 681. To the extent that this was a holding, as opposed to *dicta*, it stands for the unremarkable proposition that, at most, the choice-of-law methodology employed by Texas might reach a different result than the methodology used by Oklahoma. This difference does not amount to a split on the question before the Court: whether Oklahoma's choice-of-law methodology is unconstitutional. Accordingly, WCI does not identify a single case in which a state supreme court disagrees with the Oklahoma Supreme Court on the questions presented in the Petition.

B. The Issues Raised Are Neither Important Nor Recurring.

After arguing for thirty-one pages that this Court should grant their Petition to correct the errors allegedly made by the Oklahoma Supreme Court, WCI uses emotionally-laden rhetoric, without citing a single case, to claim that the issues raised by the petition are "important" and "recurring." Pet. at 31-33. This cannot overcome WCI's failure to establish a lower court split on the constitutionality of Oklahoma's choice-of-law methodology (or even that more than one lower court has addressed the issue) or its failure to address whether this case presents a suitable vehicle for this Court to address the three questions allegedly presented. More importantly, WCI's argument regarding the case's alleged importance is logically inconsistent.

WCI argues that *Ysbrand v. DaimlerChrysler Corp.*, 81 P.3d 618 (Okla. 2003), has "thrown open the gates to all manner of class actions" and that "[u]nless this Court intervenes, states like Oklahoma that employ constitutionally deficient choice-of-law rules will continue to serve as magnet for putative nationwide class actions." Pet. at 32-33. Aside from the fact that WCI fails to identify which states are "like Oklahoma," this statement's obvious inconsistency rests in the fact that *Ysbrand* was decided six years ago, in 2003. If WCI is correct, there should be ample evidence of the supposed flood of Oklahoma class action cases unleashed by *Ysbrand*. Yet WCI provides no citation to any such case.

In addition, subsequent legislative enactments have gutted any argument that Oklahoma will become a magnet for national class action lawsuits. First, Congress enacted the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified at 28 U.S.C. § 1332(d)) ("CAFA"), which affords defendants like WCI the right to remove national class actions to federal court. Second, the Oklahoma Legislature has enacted the Oklahoma Comprehensive Lawsuit Reform Act of 2009 ("OCLRA"), which for all intents and purposes prohibits the filing of national class actions – like the instant case – in Oklahoma state courts. 2009 Okla. Sess. Law Serv. Ch. 228, HB 1603, sec. 16, § 2023(D)(3) (West), App. A.[23]

Contrary to WCI's alarmist predictions, there is no pressing public policy need for this Court to intervene in this isolated case that presents an issue unlikely to arise again.

---

[23] Petitioner has not cited this Court to any national class action, breach of warranty case implicating *Ysbrand* that has been filed and litigated in an Oklahoma federal court subsequent to CAFA's enactment. And under OCLRA, the Oklahoma state court "gates" have now been closed to national class action lawsuits. Petitioner's contention, therefore, that unless this Court reverses the Oklahoma Supreme Court's decision in this case, the so-called "greener pastures" of Oklahoma will act as a "magnet" to future national class action, breach of warranty litigation, Pet. at 32, is baseless.

III. Oklahoma's Conflict-of-Laws Principles Comport Fully with the Due Process and the Full Faith and Credit Clauses.

A. The Constitution Does Not Mandate the Application of a Universal Set of Conflict-of-Laws Principles.

In our federal system, states are permitted to select their own choice-of-law rules so long as they do not violate the Constitution:

> It is not for this Court to say whether the choice-of-law analysis suggested by Professor Leflar is to be preferred or whether we would make the same choice-of-law decision if sitting as the Minnesota Supreme Court. Our sole function is to determine whether the Minnesota Supreme Court's choice of its own substantive law in this case exceeded federal constitutional limitations. **Implicit in this inquiry is the recognition, long accepted by this Court, that a set of facts giving rise to a lawsuit, or a particular issue within a lawsuit, may justify, in constitutional terms, application of the law of more than one jurisdiction.**

Allstate Ins. Co. v. Hague, 449 U.S. 302, 307 (1981) (emphasis added); *see also Day & Zimmermann, Inc. v. Challoner*, 423 U.S. 3, 4 (1975) (per curiam) (A "federal court . . . is not free to engraft onto . . . state rules . . . modifications which may commend themselves to the federal court, but which have not commended themselves to the State . . . .").

The question here is not whether this Court (or the Supreme Courts of Michigan, Texas, or Kansas for that matter) would adopt the same rule as Oklahoma.[24] The question is whether the Constitution is violated by applying Michigan law in a nationwide class action when WCI's contacts with Michigan gave rise to the class members' claims and those Michigan contacts "are numerous and significant." *See* Pet. App. 81a.

---

[24] Cases that WCI cites do not even peripherally address choice-of-law issues like those WCI seeks to raise. WCI cites, for example, *Ferguson v. Skrupa*, 372 U.S. 726 (1963). Pet. at 31. *Ferguson*, however, nowhere addressed the constitutionality of choice-of-law rules; rather, that decision noted that because *Lochner*-esque doctrines had long been discarded, "courts do not substitute their social . . . beliefs for the judgment of legislative bodies." *Id.* at 730. Accordingly, the Court reversed the district court's injunction against enforcement of a Kansas debt adjusting statute. *Id.* at 732-33. There is no discussion in *Ferguson* of whether a state's choice-of-law rules comport with the Due Process or Full Faith and Credit Clauses. *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953) is similarly unhelpful. In *Wells*, this Court reviewed the Full Faith and Credit Clause restrictions as applied to a choice-of-law issue, but it did not address whether one state's courts could apply the law of another state in a nationwide class action. The import of *Wells* was that the Full Faith and Credit Clause did not "compel the forum state to use the period of limitation of a foreign state." *Id.* at 517.

B. If the Application of a State's Conflict-of-Laws Principles Leads to the Selection of a State's Laws Where That State's Contacts with the Litigation and the Class Plaintiffs Are Significant, the Conflicts Analysis Fulfills the Requirements of the Constitution.

In *Phillips Petroleum Company v. Shutts*, 472 U.S. 797 (1985), this Court set forth the constitutional parameters applicable to conflict-of-laws principles utilized by state courts. *Shutts* was a class action case filed in state court in Kansas involving claims for underpayment of royalties pursued against an Oklahoma-based oil company. *Id.* at 799. The putative class members, only a handful of whom were Kansas residents, were parties to contracts involving oil and gas leases that were scattered throughout eleven different states (only a few were located in Kansas). *Id.* at 801. The Kansas Supreme Court applied "Kansas contract and Kansas equity law to every claim in [the] case, notwithstanding that over 99% of the gas leases and some 97% of the plaintiffs in the case had no apparent connection to the State of Kansas except for [the] lawsuit." *Id.* at 814-15.

Against this background, this Court analyzed the constitutional boundaries surrounding a conflict-of-laws analysis. It began by noting that "a particular set of facts giving rise to litigation could justify, constitutionally, the application of more than one jurisdiction's laws." *Id.* at 818. This Court explained that the Due Process and Full Faith and Credit

Clauses "provided **modest** restrictions on the application of forum law." *Id.* (emphasis added). The Court then set forth the following Constitutional restrictions:

> [The state] must have a significant contact or significant aggregation of contacts to the claims asserted by each member of the plaintiff class, contacts creating state interests, in order to ensure that the choice of [the state law] is not arbitrary or unfair.

Id. at 821-22 (quotations omitted).

C. As Explained by the Oklahoma Supreme Court in its Opinion, on this Record, There Is a Significant Aggregation of Contacts Between Michigan and the Class Members' Claims, and as a Result, the Application of Michigan Law Complies With the Constitutional Standard Set Forth in *Shutts*.

WCI's contention that the Oklahoma Supreme Court applied an arbitrary, *per se* conflict-of-laws analysis in upholding (in part) the state district court's certification decision is belied by the seven-page conflict-of-laws analysis the court conducted. The Oklahoma Supreme Court expressly applied the "most significant relationship" test of the Restatement (Second) of Conflict of Laws §§ 6, 191 & cmt. f (1971) in holding that the state district court correctly determined that Michigan law governed the class members' claims. *See* Pet. App. 77a-83a. In applying

an even more stringent standard than that put forth by this Court in *Shutts*, the Oklahoma Supreme Court concluded:

> Williams' contacts with Michigan are numerous and significant. . . . It contracted with Ford in Michigan and produced the pedals as a supplier for . . . Ford. Although certain activities may have occurred in different states, the "engineering specifications" from which Williams was to design the pedals emanated from Ford's engineers in Michigan. This is in line with *Ysbrand* . . . wherein we found Michigan's interest in the conduct of DaimlerChrysler Corp., . . . "and thus its connection to warranty issues," was greater than the place of delivery for determining Plaintiffs' claims . . . . *Id.* at 626.
>
> . . . Ford and Williams appeared to understand that Ford's requirements and specifications would govern the business relationship and that Ford directed the activities between the parties . . . .
>
> For purposes of Plaintiffs' breach of warranty claims, we find that the law of Michigan, the state of Ford's principal place of business as manufacturer which controlled the specifications, requirements and testing for the pedals, has a greater "intensity of interest" than any other state involved. Its law should be applied.

Pet. App. 81a-83a (footnotes omitted).

The Court further found:

> [I]n light of the nature and extent of Williams' contacts with Ford in Michigan, we find Michigan has a significant "aggregation of contacts" such that the application of Michigan law to the breach of warranty claims is "neither arbitrary nor fundamentally unfair" and thus, constitutional.

Id. at 83a (citing *Ysbrand*, 81 P.3d at 626 (citing *Shutts*, 472 U.S. at 818)).

The record on which the Oklahoma Supreme Court made these determinations contradicts WCI's efforts to disclaim a sustained business presence in Michigan and evidences that WCI made design, manufacturing, and distribution decisions in Michigan for the pedals that are now the subject of the class members' claims. This record is stout and includes, for example, numerous letters detailing the collaboration of WCI's "Corporate Office – Michigan"[25] with Ford personnel in Dearborn, Michigan, such as:

---

[25] WCI repeatedly alludes to its principal place of business in Oregon and its incorporation in Delaware as somehow suggesting as a matter of constitutional law that Michigan law cannot apply. *E.g.*, Pet. at 3. But *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930), which WCI cites, shows that WCI's residency or citizenship should be of little consequence to the choice-of-law inquiry here. Rejecting Dick's arguments that Texas law should apply, the Court noted "nothing in any way related to the policy sued on, or the contracts of reinsurance, was ever done . . . in Texas." *Id.* at 408. "All acts relating to making of the policy were done in Mexico . . . . Neither the Texas laws nor . . . courts were

(Continued on following page)

- A letter from "Williams Controls, Inc. Corporate Office – Michigan" to Ford's "Quality, Manufacturing and Purchasing Operations" in Dearborn, Michigan states that "[WCI] had designed and submitted preliminary costs [for the pedals] to Ford in November of 1998 . . . . [W]e have submitted timing charts to meet Ford release schedules and production tooling and final process verifications are pending . . . ." Pls.' Mot. for Class Cert. of 12/19/05, Ex. A8, Letter from WCI's Homovec to Ford Buyer Burrows of 8/26/99 at 1-2;

- Another letter from the "Williams Controls, Inc. Corporate Office – Michigan" to Ford's "Quality, Manufacturing and Purchasing Operations" in Dearborn, Michigan states that "[w]e are grateful for the opportunity to continue as a supplier to Ford, and manufacture the . . . pedal . . . . The Purchase Agreement is approved to include the following content and comments: . . . The Ford engineering released sensor offered is specific to the . . . design, coplanar element with 2 track signal output . . . and supports an Integral multi-pin connection." *Id.*, Ex. A9, Letter from Homovec to Burrows of 9/30/99 at 1;

---

invoked for any purpose. . . . The fact that Dick's permanent residence was in Texas is without significance." *Id.*

- Another letter from the "Williams Controls, Inc. Corporate Office – Michigan" to Ford's "Quality, Manufacturing and Purchasing Operations" in Dearborn, Michigan states that "[s]everal design enhancements motivated the price reduction, none . . . [a]ffected the core design nor the fundamental . . . technology being evaluated . . . . Your best and final price [for the pedals] is as follows and is based upon the detailed specifications . . . associated with the . . . design. . . . The . . . Controls assembly will support the following design features . . . ." *Id.*, Ex. A10, Letter from Homovec to Burrows of 9/14/99 at 1-2;

- Yet another letter from the "Williams Controls, Inc. Corporate Office – Michigan" to Ford's "Quality, Manufacturing and Purchasing Operations" in Dearborn, Michigan states: "Thank you for the opportunity to review Ford . . . strategy as it applies to . . . [the] pedal assemblies. . . . We are in agreement with the [Ford] specification [for the electronic throttle control]. . . . [W]e have identified elements in the Ford Spec that need to be reviewed." *Id.*, Ex. A11, Letter from Homovec to Burrows of 9/13/99 at 1.

These excerpts comprise but a sampling of the evidence offered at the certification hearing proving that WCI made its design, manufacturing, and sales decisions in Michigan for the pedals now at issue in

the class action. WCI's assertion that it "had no relevant contacts" with Michigan, *e.g.*, Pet. at i, is inaccurate.[26]

WCI also contends that the Oklahoma Supreme Court erred in failing to "undertake[] any individualized analysis regarding the connection between the state, each class member, the class member's claims and each defendant . . . ." Pet. at i. In making this argument, WCI both misstates the requirements of *Shutts* and mischaracterizes the analysis the Oklahoma Supreme Court performed when it reviewed the state district court's certification decision.

Shutts does not require that state courts, when conducting a certification hearing, literally identify every potential class member and conduct a separate conflicts analysis for each one. Rather, *Shutts* merely

---

[26] The sheer number of WCI's activities in Michigan for the purpose of designing, producing, and distributing the pedals giving rise to the class claims belies WCI's reliance on, for example, *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *BMW of North America v. Gore*, 517 U.S. 559 (1996). Michigan plainly has an interest in regulating WCI's conduct occurring *within Michigan*. In contrast, both *Gore* and *State Farm* addressed state court awards of punitive damages to deter conduct occurring *outside* the state. *See State Farm*, 538 U.S. at 421 ("Nor . . . does a state have a legitimate concern in imposing punitive damages . . . for unlawful acts committed outside the State's jurisdiction."); *Gore*, 517 U.S. at 572-73 ("Alabama may insist that BMW adhere to a particular . . . policy in that state. Alabama does not have the power, however, to punish BMW for conduct that was lawful where it occurred and . . . had no impact on Alabama . . . .").

held that the status of a case as a class action did not permit courts to overlook the constitutional restrictions described above. In other words, even in the class action context, the state whose law is applied "must have a significant contact or significant aggregation of contacts to the claims asserted by each member of the class . . . ." *Id.* at 821 (internal citations and quotations omitted).

The Oklahoma Supreme Court's analysis in the present case is consistent with this holding. In affirming the state district court's certification ruling, the Oklahoma Supreme Court held that because Ford made design and manufacturing decisions regarding the pedals in Michigan, the law of Michigan had the most significant relationship to this dispute. Pet. App. 81a-83a. The court further noted that the significance of the relationship was not lessened with respect to WCI, a component parts manufacturer that contracted with Ford in Michigan and participated in design and manufacturing decisions with Ford regarding the pedals in Michigan. *Id.* As the nature of the dispute for every class member centers on design and manufacturing decisions made by WCI and Ford in Michigan, the conclusion that Michigan contacts are significant applies equally to every individual class member. In sum, the Oklahoma Supreme Court's analysis was entirely consistent with the holding of *Shutts*.

The *Shutts* standard controls. The Oklahoma Supreme Court's conflict-of-laws analysis as applied to the record facts in this case meets the *Shutts* standard – in fact, it is not even a close question.

D. The Constitution Does Not Require That in a Breach of Warranty Class Action That the Laws of Any Particular State Control.

Finally, WCI argues that "the Oklahoma Supreme Court [violated] the rights of class action defendants under the Full Faith and Credit and Due Process Clauses by subjecting these defendants, such as WCI, to liability under one state's law that they would not face under the law of other states where putative class members reside." Pet. at ii. To translate: WCI is complaining that had the instant suit been filed by individuals in their own home states (rather than as a class action), some of the suits might have faced dismissal because some of the states have laws that might preclude the claims asserted here. WCI claims that this dichotomy confirms the Oklahoma Supreme Court's decision was somehow unconstitutional.

Of course this is the same erroneous argument (stated a little differently) that WCI has made from the beginning – that Oklahoma conflict-of-laws principles should impose the law of each class members' home state. As stated previously, however, the Constitution does not mandate any particular resolution of a conflict-of-laws issue. States are free to disagree as to how to resolve conflicts. And in that spirit, Oklahoma is free to conclude that for cases filed within its borders, the resolution of a conflict-of-laws issue involving a warranty claim can lead to the imposition of the law of the home state of the

manufacturer rather than the law of the home state of the buyer. So long as that decision is not arbitrary and is based upon significant contacts between the state whose law is chosen and the class Members' claims, there is no constitutional issue. That, of course, is the situation here.

In sum, the existence of conflicts means that the outcome may differ depending upon which state's law applies. WCI's complaint, when carefully parsed, is directed at the fact that conflicts exist, not the constitutionally permissible manner in which the conflicts at issue were dealt with here by the Oklahoma Supreme Court.

CONCLUSION

For the above reasons, the Class Representatives respectfully request the Court deny WCI's Petition for Certiorari.

Respectfully submitted,

MICHAEL BURRAGE
DAVID BURRAGE
BURRAGE LAW FIRM
First United Center,
Suite 100
115 North Washington
Durant, OK 74720
(580) 920-0700

TROY L. GREENE
GREENE LAW FIRM, P.C.
1415 Louisiana, Suite 3200
Houston, TX 77002
(713) 547-0500

GRANT J. HARVEY
ANDREW L. PICKENS
Counsel of Record
MARK A. GIUGLIANO
GIBBS & BRUNS, LLP
1100 Louisiana, Suite 5300
Houston, TX 77002
(713) 650-8805

JOHN E. DOWDELL
WILLIAM W. O'CONNER
NORMAN WOHLGEMUTH
CHANDLER & DOWDELL
2900 Mid-Continental Tower
401 South Boston Avenue
Tulsa, OK 74103
(918) 583-7571

Counsel for Respondents